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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

LONGS DRUGS STORES CALIFORNIA, INC., Plaintiff and Respondent, v. MARY J. SHEA et al., Defendants and Appellants.	A101448 (Alameda County Super. Ct. No. 2002055115)

Mary J. Shea and the Shea Law Offices (collectively Shea) appeal from the order denying their special motion to strike the complaint of Longs Drugs Stores California, Inc. under the anti-SLAPP statute (Code Civ. Proc., § 425.16; hereafter § 425.16). Shea represented the plaintiffs in a prior lawsuit against Longs, *Palacio v. Longs Drug Stores California, Inc.* (Alameda County Super. Ct. No. 793893-5), charging Longs with tortuous conduct in questioning employees about suspected thefts. Longs has sued Shea herein for defamation based on a press release Shea issued after the jury in *Palacio* rendered its verdicts. The trial court expressed some doubt that Longs' causes of action involve a "public issue" for purposes of section 425.16, but denied Shea's motion to strike on the ground that Longs had demonstrated a probability of prevailing on its claims. We affirm on the ground that Longs' claims do not involve a public issue.

I. BACKGROUND

The nine plaintiffs in the *Palacio* case claimed that they were fired by Longs after being subjected to abusive interrogations that led them to falsely confess to stealing from the company. A February 1, 2001, news story from KGO-TV described the allegations and indicated that Longs denied any wrongdoing. Of the 15 causes of action alleged by the *Palacio* plaintiffs, six, including intentional infliction of emotional distress and false imprisonment, were eventually submitted to a jury. The jury awarded six plaintiffs $50,000 each for intentional infliction of emotional distress, and found for Longs on the other causes of action.[1] The damage awards were the subject of a June 6, 2001, news story from KGO-TV, which reported that Stephan Roath, Longs' President and CEO, had told the ABC7 News I-Team "that because of the case, Longs has changed their policy for how they conduct interrogations with employees accused of theft. He says the verdict was 'a lesson and a message to Longs that you need to be more fair and more respectful of persons in these tough situations.' " On June 20, 2001, the jury returned a further special verdict declining to assess punitive damages against Longs, and on that date Shea issued the press release that is the subject of this litigation. The press release, with the portion at issue italicized, reads in full as follows:

"In Palacio v. Longs Drug Stores, an Alameda County jury awarded 6 former employees $300,000.00 against leading drug store chain Longs Drug Stores for intentional infliction of emotional distress caused by the abusive interrogation tactics of Longs' Loss Prevention Agents. The jury also found that Longs Drug's conduct was despicable, fraudulent and oppressive, but awarded no money for punitive damages. [¶] According to lead Counsel, Mary Shea, 'We are very pleased with this outcome. The jury made a lot of sacrifices and we truly appreciate their effort. The verdict far exceeded any money Longs ever offered in this case or in any other case like this. [¶] I am very proud of my clients and my trial team. They demonstrated extreme courage under the

[1] We reversed the judgment for the plaintiffs in *Palacio v. Longs Drug Stores California, Inc.* (Nov. 7, 2003, A096347, A097583) [nonpub. opn.].

most difficult circumstances. [¶] *We were always in this to get Longs to stop abusing employees. They did not take action after a woman who had been interrogated committed suicide, or after they had received dozens of other complaints.* This verdict is the first step in effecting change. [¶] We are encouraged by Longs' CEO's recent admission of wrongdoing by Loss Prevention and we expect that our class action suit will make an even bigger impact."

Longs demanded that Shea retract the press release insofar as it implied that a woman had committed suicide as a result of being interrogated by Longs, and then sued Shea for libel, slander, "defamation," and negligent misrepresentation. The evidence presented on Shea's motion to strike was as follows:

Koreen Brigman (Brigman) committed suicide on the morning of March 31, 1993. Two days earlier, she had been questioned by Longs and confessed to stealing from Longs while working as a sales representative for a Longs' supplier. She signed a form consenting to be interviewed and acknowledging that she was free to leave whenever she desired. In her written confession, she estimated that she had caused Longs to lose $261,000 "by giving Longs merchandise to sales reps and cosmeticians and undercharging Longs with claims for merchandise."

According to the San Joaquin County sheriff-coroner's report of the suicide, Brigman's husband, Robert Brigman (Robert), told the investigating deputy that Longs had been investigating Brigman's boss Joe Reniese, who "was suppose[d] to have shorted Long's . . . [¶] [Brigman] got home late Monday night and advised [Robert] that someone at Long's had talked to her; [Robert] used the word 'interrogated.' [Robert] advised his wife still denied any wrongdoing." The deputy learned that Reniese had fired Brigman for stealing from Longs. Longs' merchandise, mostly jewelry, was found in the garage of the Brigman's home and returned to Longs.

Brigman left several suicide notes. She mentioned being detained by a security officer when leaving a Longs store after writing a claim that according to one letter "wasn't written correctly" and according to another "was off." "I was taken upstairs and signed a form with Mr. Hastings," she wrote. "They also said," she continued, "I left

El Cerrito with a bag of merchandise in my hand without taking it to recieving [*sic*]. They claim that they have this on tape so I signed a apologee [*sic*] with Mr. Hastings." In one letter she wrote, "I know Joe would of let me go. Once they are going to investigate him I was just a scape goat for him." In another she wrote, "Also they are going to look into the claims in my territory and Joe's & Marcelles stealing. Joe owes $251,000. This would have been to[o] much of embarrassment to you. I knew that once Joe had let me go or I was convicted it would be to[o] much for our marriage to withstand." In another she said, "Please forgive me but I just couldn't go through you disappointed in me for everything that's happened. It's a very long story and you will surely know. Please give Joe all the merchandise in the garage so he doesn't loose [*sic*] Longs accts. That's my fault."

The jewelry retrieved by Longs from the Brigman's garage had a value of $3,000 - $6,000, according to the declaration of Brigman's sister, Bernadette Benavidez, filed on behalf of the plaintiffs in the *Palacio* case. Benavidez said that about one week after Brigman's death she and Robert requested a meeting with Longs' head of loss prevention, Dennis Miller, and Hastings Lewis, "one of the men who had interrogated [Brigman] in a conference room." They " 'wanted some answers about what they had done to [Brigman],' " and Benavidez began the meeting by charging that "whatever happened in that room caused my sister's death." Benavidez asked Lewis how he came up with the figure for the amount of the loss Brigman had caused, and he said that he used a formula multiplying the "discrepancy they discovered" by the number of days Brigman had been at Longs. Benavidez accused Lewis, saying, "You had her so scared. You led her to believe she had no hope. It was such an exaggerated amount for that imported crap that wasn't even worth 30 cents a piece. You humiliated her and scared her and made her feel there was no way to ever rectify the situation. You told her you were going to bring her husband into it and you threatened her with law enforcement." In the declaration, Benavidez indicated that Brigman had no history of mental illness, and said that she believed Longs' interrogation had caused Brigman to commit suicide. She

said that, at the meeting, Miller denied that Longs' actions had brought about Brigman's death, and kept repeating, " 'Well, she signed a statement.' "

Robert sued Longs and Lewis for Brigman's wrongful death. The complaint alleged that Brigman had been illegally detained and falsely accused, and that those actions caused her death. The motion of Longs and Lewis for summary judgment was granted after Robert failed to respond to their request for admissions. According to the declaration of a Shea attorney in the *Palacio* matter, Robert did not respond to the request for admissions in the wrongful death case because he ran out money to pay his attorney and the attorney stopped working on the case.

Evidence of Brigman's suicide was excluded in the *Palacio* case, but Benavidez was permitted to testify that she had complained to Miller and Lewis about Longs' interrogation techniques. This evidence was allowed to impeach the testimony of Miller and Lewis that no such complaint had been raised before those of the *Palacio* plaintiffs. Benavidez said that she met with Miller and Lewis and complained about Lewis's interrogation of Brigman. She told the jury that had she charged Lewis with "terroriz[ing] my sister. That . . . the amount of money that he had talked about was exaggerated. I couldn't understand where he came up with such an amount. I wanted to know exactly what went on in there. That whatever happened was terrible. . . . I wanted to complain to him about the treatment that she received in that room." She said that when she met with Miller and Lewis, she "personally had a very clear understanding" that Brigman had been mistreated in the interrogation. She acknowledged that she did not have "firsthand facts as to the extent" of Brigman's culpability and "still to this day [did not] have a full understanding of what happened," but said that she had received a communication from Brigman denying any wrongdoing. She admitted that Brigman had not personally told her that she had been mistreated by Longs' loss prevention personnel.

The jury learned during the course of Lewis's testimony that Robert had sued Longs, but it was not disclosed that the suit was one for wrongful death. After Lewis said that he did not recall anyone ever objecting to his behavior, he was shown a document identified as an "amended complaint." He acknowledged having seen the document, but

denied that it was a complaint about his behavior and said that the case involved a vendor who had stolen from the company. Lewis admitted that he had been named as a defendant in a case brought by Robert and had met with Robert before the suit was filed. However, he denied that Robert complained in the meeting about his behavior, and said that he did not consider "someone filing a lawsuit" to be "a complaint." He explained: "[I]n that particular case, a person stole a half million dollars from the company, and at the conclusion of that case, he [*sic*] said everything I did was professional. [¶] So, how can I say that's a complaint? [¶] . . . [¶] . . . If a person filed a lawsuit, that's their issue. It doesn't mean I've done anything wrong."

After Miller testified that he did not recall any complaints about Lewis, he was asked about his 1993 meeting with Robert and Benavidez. Miller admitted that Robert "was complaining about how his wife was treated," but said he was not sure that he would "call it a significant complaint." Miller said that he had interviewed Brigman the day after she was questioned by Lewis, and that "if you call it a complaint against Mr. Lewis, I would have to say it was a complaint against myself also." Without mentioning Brigman's suicide, he characterized Robert as having been "totally upset by [Brigman's] actions, what she subsequently did," and he recalled that the ensuing litigation against Longs had been dismissed.

Miller and Benavidez gave conflicting testimony as to whether Miller disclosed in the 1993 meeting that he had questioned Brigman. Benavidez said that her anger had been directed toward Lewis because Miller did not reveal that he, too, had interviewed Brigman. She said she told Miller that he should attend Longs' interrogations and investigate how they were conducted. Miller said he told Benavidez and Robert that he had questioned Brigman the day after he learned the extent of the loss she confessed to Lewis. He said that Brigman signed a form consenting to be questioned again, and when he asked whether she had been properly treated by Lewis and another investigator in the prior interview, she assured him that Lewis and the other man "were gentlemen and that everything had been okay."

Miller said that in the second interview Brigman estimated the amount of Longs' loss to be $170,000 rather than $260,000, and suggested that her company was to some extent responsible for all but $1,000 of that amount. However, Longs' representatives found no evidence of wrongdoing at Brigman's company when they went there the next day, and recovered over $10,000 or $15,000 worth of Longs' merchandise from Brigman's garage.

When Miller was asked, "[D]id anyone do an independent, thorough and impartial investigation of Mr. Hastings Lewis and yourself . . . relative to the interrogation of Koreen Brigman?" he answered, "No."

II. BACKGROUND

Ruling on an anti-SLAPP motion is "a two-step process. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. . . . If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim." (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) In denying Shea's motion, the court below found that Longs had carried its burden on the second prong of the test.[2] Anti-SLAPP motion rulings are reviewed on appeal de novo. (*Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 894.)

We turn first to the threshold issue of whether Longs' causes of action arise from an " 'act in furtherance of [Shea's] right of petition or free speech under the United States or California Constitution in connection with a public issue.' " (§ 425.16, subd. (e); see *Commonwealth Energy Corp. v. Investor Data Exchange, Inc.* (2003) 110 Cal.App.4th 26, 32-33 [proceeding directly to second prong of the anti-SLAPP test "would, in effect,

[2] When Shea advised the court that the order on the motion would be appealed, the court suggested that it had gone directly to the second prong without considering the first: "[W]e passed over the first prong of the SLAPP. I said I have some real trouble understanding how somebody can make something a public issue by issuing a press release. We passed on that and we only reached the second prong. If the Court of Appeal wants to deal with it, there's enough interest in SLAPP, may well be that you'll lose on the first prong on appeal."

turn the . . . statute into a cheap substitute for summary judgment"].) Since Longs has voluntarily dismissed its "defamation" and negligent misrepresentation causes of action, the causes of action at issue are for libel and slander. In those causes of action Longs alleges that the press release falsely implied that Longs caused Brigman to commit suicide. The trial court found that this inference could be fairly drawn from the press release, and we agree with that conclusion. The question is whether a claim that Longs caused Brigman's suicide is a "public issue" for purposes of the anti-SLAPP law.

Under the statute as relevant here, a "public issue" is involved when a cause of action arises from: "(2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subds. (e)(2), (e)(3), (e)(4) [hereafter subds. (e)(2), (e)(3) and (e)(4), respectively].) The statute is to be broadly construed. (§ 425.16, subd. (a).)

Shea contends that Longs' causes of action fall into each of the foregoing categories. Shea argues that subdivision (e)(2) applies because the causes of action involve a statement made in connection with the *Palacio* case, a judicial proceeding. Shea relies on reasoning in *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 822, disapproved on another point in *Equilon Enterprises v. Consumer Cause, Inc., supra,* 29 Cal.4th at p. 68, fn. 5, to the effect that the statement in question need only be "rationally connected to the litigation itself." However, the statute does not extend to all suits "arising from any act having any connection, however remote, with an official proceeding"; the act "must occur in connection with 'an issue under consideration or review' in the proceeding." (*Paul v. Friedman* (2002) 95 Cal.App.4th 853, 866.) Here, the press release is alleged to be defamatory only insofar as it implied that Longs caused Brigman's suicide. The cause of her suicide was at issue in Robert's wrongful death

action against Longs, but not in the *Palacio* matter, where the jury was never told of the suicide or asked to decide what had caused it. Accordingly, since Longs' causes of action did not arise from a statement made in connection with an issue considered or reviewed in *Palacio*, subdivision (e)(2) is inapplicable.

Shea contends that the causes of action arise from a statement made in connection with an issue of public interest within the meaning of subdivisions (e)(3) and (e)(4). The court in *Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 924 (*Rivero*), observed that "the precise boundaries of a public issue" had not been defined for purposes of the anti-SLAPP statute, but that public issues had been found in cases where the statements at issue concerned: (1) "a person or entity in the public eye"; (2) "conduct that could directly affect a large number of people beyond the direct participants"; or (3) "a topic of widespread, public interest." The court in *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132-1133 (*Weinberg*), doubted whether an "all-encompassing" definition of the term "issue of public interest" could be given, but found a number of "guiding principles" in the precedents: "First, 'public interest' does not equate with mere curiosity. . . . Second, a matter of public interest should be something of concern to a substantial number of people. . . Third, there should be some degree of closeness between the challenged statements and the asserted public interest . . . . Fourth, the focus of the speaker's conduct should be the public interest rather than a mere effort 'to gather ammunition for another round of [private] controversy . . . .' . . . [Fifth] [a] person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people." (*Id.* at pp. 1132-1133.)

Although the *Palacio* case received some publicity, it is not clear that Longs' methods of employee interrogation were a subject of "widespread" public interest. (*Rivero*, *supra*, 105 Cal.App.4th at p. 924; compare, e.g., *Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 807 [alleged defamation of reality TV contestant by talk-radio host was public issue because show had "generated considerable debate within the media"].) Whether Longs' employee-interrogation techniques were abusive might be

of interest to Longs' employees, but it is not apparent that employees other than the *Palacio* plaintiffs were "directly affect[ed]" by the verdict on that issue. (*Rivero*, *supra*, at p. 924.) It is also debatable whether the overall "focus" of the press release was on the public interest or the "gather[ing of] ammunition" for the class action to which it alluded. (*Weinberg*, *supra*, 110 Cal.App.4th at p. 1132.) However, there is no question that Longs is a prominent company that deals with the general public,[3] and while everything done by such a company is not necessarily a public issue, Longs was at least arguably an "entity in the public eye" (*Rivero*, *supra*, at p. 924) insofar as its employee interrogations were concerned given the news media's coverage of the *Palacio* case. (See, e.g., *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 651, disapproved on another point in *Equilon Enterprises v. Consumer Cause, Inc., supra,* 29 Cal.4th at p. 68, fn. 5 [church was a matter of public interest "as evidenced by media coverage and the extent of [its] membership and assets"].)

The problem for Shea is that this lawsuit was not filed because the press release claimed, with respect to an arguably public issue, that Longs used abusive interrogation techniques. Longs is suing over the press release only insofar as it implied that Longs' actions caused a suicide. Shea argues that the press release's reference to the suicide cannot be divorced from the larger, assertedly public issue of Longs' employee abuse or from the *Palacio* trial. This argument is based on *M. G. v. Time Warner, Inc.* (2001) 89 Cal.App.4th 623. In that case, the manager of a Little League team had pled guilty to molesting children he coached, and the defendant used a photograph of the team in stories about adult coaches who sexually molest youths playing team sports. Players shown in the photo sued for invasion of privacy and infliction of emotional distress. The plaintiffs "nearly conceded" that the case involved a public issue, but tried to characterize the issue "as being limited to the narrow question of the identity of the molestation victims." (*Id.* at p. 629.) The court found that "definition [of the issue] too restrictive.

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[3] We have granted Shea's request to take judicial notice of Longs' press releases in which it describes itself as "one of the leading drug store chains in North America."

The broad topic of the article and the program was not whether a particular child was molested but rather the general topic of child molestation in youth sports, an issue which, like domestic violence, is significant and of public interest."

This aspect of the *M.G.* decision illustrates what has been called "the synecdoche theory of public issue in the anti-SLAPP statute," where "[t]he part [is considered] synonymous with the greater whole." (*Commonwealth Energy Corp. v. Investor Data Exchange, Inc., supra,* 110 Cal.App.4th at p. 34.) The public issue question in *M.G.* may have been correctly resolved on the specific facts of that case, but the court's approach—treating a cause of action as involving a topic of broad general interest, and thus a public issue—has not been followed in later cases. The recent decisions focus instead on the "*specific nature of the speech*" at issue, "rather than the generalities that might be abstracted from it." (*Ibid.*)

In *Rivero*, for example, the plaintiff, a janitorial supervisor at a University of California facility, sued a union for libel and slander alleging that the union had distributed documents containing false information about him. The union made an anti-SLAPP motion, arguing that the publications involved an issue of public interest because they raised "the broader issue of abusive supervision throughout the University of California system," which potentially " 'impacte[ed] a community of public employees numbering 17,000.' " (*Rivero*, *supra*, 105 Cal.App.4th at pp. 919, 925.) The court rejected this argument, noting that the challenged statements only "concerned the supervision of a staff of eight custodians by Rivero, an individual who had previously received no public attention or media coverage. Moreover, the only individuals directly involved in and affected by the situation were Rivero and the eight custodians. Rivero's supervision of those eight individuals is hardly a matter of public interest." (*Id.* at p. 924.)

The union in *Rivero* argued further that the publications involved a public issue because they concerned "disrespectful supervision," a matter of "generalized concern" to union members, and they showed the steps custodians could take to stop misconduct. (*Rivero*, *supra*, 105 Cal.App.4th at pp. 919, 925.) The court distinguished, however,

between non-public information that "can be used as an example or as a motivator," and public information that "has intrinsic value to others, such as information that a person's home might be in danger of exploding [citing *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1420], that a person may experience increased traffic due to construction of a mall [citing *Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8, 15], or that management of a person's senior community may be ineffective [citing *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 472]." (*Ibid.*)

An anti-SLAPP motion was similarly rejected in *Consumer Justice Center v. Trimedica International, Inc.* (2003) 107 Cal.App.4th 595, where the maker of an herbal supplement for female breast enlargement who was sued for fraud and false advertising argued that the case involved a public issue because herbal dietary supplements were a matter of public interest. The court disagreed, observing that "Trimedica's speech is not about herbal supplements in general. It is commercial speech about the specific properties and efficacy of a particular product, Grobust. If we were to accept Trimedica's argument that we should examine the nature of the speech in terms of generalities instead of specifics, then nearly any claim could be sufficiently abstracted to fall within the anti-SLAPP statute." (*Id.* at p. 601.) Likewise, in *Commonwealth Energy Corp. v. Investor Data Exchange, Inc., supra,* 110 Cal.App.4th at p. 34, a suit against a telemarketing firm that had touted its services as a way of avoiding investment scams did not involve a public issue because the speech in question was a sales pitch to a small number of people for a particular service, not about investment scams generally.

These decisions have all rejected the sort of argument Shea advances for finding a public issue in this case. The contention here is that, "[l]ike the *M.G. v. Time Warner* case, the topic of Shea's press release—alleged abusive interrogation tactics practiced by a very large corporation that should know better—is 'an issue which . . . is significant and of public interest.' Employee abuse is a significant topic of public interest and the *Palacio* trial concerning Longs' abusive interrogations tactics received significant media and public attention." As previously discussed, the subject of Brigman's suicide was not broached in the *Palacio* trial, and while that trial had received media attention, her

suicide had not. As for employee abuse, setting aside the fact that Brigman was not a Longs employee, the allegedly false implication that Longs caused her suicide no more involved the broad topic of employee abuse than the allegedly false statements in *Rivero* involved the broad topic of abusive supervision, or the allegedly false advertising claims in *Trimedica* involved the broad topic of herbal supplements, or the allegedly unlawful sales pitch in *Commonwealth Energy* involved the broad topic of investment scams. "[I]t is the *principal thrust* or *gravamen* of the plaintiff's cause of action that determines whether the anti-SLAPP statute applies" (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 188) and, again, Longs is suing over the implication that it caused a suicide, not the assertion that it abused employees suspected of theft. The suicide in question was a private matter until Shea publicized it, and the press release could not by itself turn the cause of that suicide into a public issue. (*Weinberg*, *supra*, 110 Cal.App.4th at p. 1133; *Rivero*, *supra*, 105 Cal.App.4th at p. 929.) Nor does the cause of Brigman's suicide qualify as "information that has intrinsic value to others." (*Rivero*, *supra*, 105 Cal.App.4th at p. 925; compare, e.g., *Wilbanks v. Wolk*, *supra*, 121 Cal.App.4th at pp. 898-900 [consumer protection information].)

Accordingly, we conclude that Longs' libel and slander causes of action do not arise from an act in furtherance of the right of petition or free speech in connection with a public issue within the meaning of section 425.16. In view of this conclusion, we need not determine whether Longs established a probability of prevailing on its claims.

III. DISPOSITION

The order denying the special motion to strike is affirmed.

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Kay, P.J.

We concur:

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Sepulveda, J.

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Rivera, J.